

REPORT

Of the Committee appointed on the part of the House of Representatives, to confer with a Committee of the Senate, on the subject of the disagreeing votes of the two houses, on the amendment of the Senate, to the bill making appropriations for the military service of the United States for the year 1818.

FEBRUARY 12, 1818.

Read, and ordered to lie upon the table.

The Committee appointed on the part of the House of Representatives, to confer with a committee of the Senate, on the subject of the disagreeing votes of the two Houses, on the amendment of the Senate, to the bill making appropriations for the military service of the United States for the year 1818, have met the committee of the Senate, in pursuance of their appointment. They considered it right to offer to the committee of the Senate the following exposition of the views which they supposed the House of Representatives to have taken in disagreeing to the amendment of the Senate, in the hope that it might obviate or lessen the difficulties which separated the two Houses.

By the construction of the law of 1812, which the committee of the House of Representatives believed to be adopted by that House, the pay of a brevet commission, is due only when the officer exercises a command to which his lineal rank would not entitle him. To such command, under the President's general order of 1816 and 1817, he may be assigned, upon special and temporary occasions. It is believed, from the amendment proposed by the Senate, that

their construction is not very different from this. The construction of the War Department, however, is very different. The committee of the House of Representatives consider it wrong to explain or amend an act by which salaries or pay is regulated by the provisions of an appropriation law. But if it were right, the short debate which occurred in the House of Representatives, on the Senate's amendment, sufficiently proves that that amendment might change a little the ground of argument, but would not terminate the controversy.

As an amendment of the law of 1812, the provision proposed by the Senate, is, therefore, unsatisfactory, and to insist upon an appropriation previous to an amendment, is to insist either that the one body shall conform its appropriations, not to its own construction of existing laws, but to that of the other body, or that both shall adopt what both believe to be erroneous, the construction of the executive government.

The committee of the House of Representatives believe, that respect for the rights of both houses requires that the act of 1812 should be amended, by defining, more precisely, the contingencies in which pay shall be due, or if this be impracticable, by authorizing it in all cases, or in none. The bill which passed the House of Representatives, at its last session, may explain the amendment which it then preferred, but it now insists only that the amending law should first determine to whom pay is due, before an appropriation should be made for its payment.

The committee of the House of Representatives consider it necessary, to fair and free legislation, that appropriations, in regard to the propriety or the extent of which, the two houses find, after deliberation, that they still differ, should be separated from those which both consider as necessary to the public service. If either branch of the legislature determine that it will not make the great mass of necessary appropriations, while there remains one unprovided for, which it considers to be proper, it throws upon the other branch the necessity of concurring in an appropriation which it may believe that neither the law nor the public interest requires, or of endangering all the appropriations of the government. The committee of the House of Representatives hope that the appropriations which both houses deem necessary will be made, and that the appropriation for brevet officers which the Senate suggests will be left to be provided for when an amendment to the act of 1812 shall determine what that appropriation ought to be.

The committee of the Senate, in answer to these observations, supported their amendment by arguments, which they have since reduced to writing, and which the committee of the House of Representatives are thus enabled to report more accurately than they could otherwise have done.

The conferees, on the part of the Senate, admitted that doubts might exist, as to the proper construction of the act of 1812, allowing brevet officers, and that it might be found expedient to remove those doubts by an explanatory law defining more precisely the

contingencies in which such pay should be allowed, but as according to the construction given that law by the House of Representatives as stated by their conferees, which accords substantially with that contained in the Senate's amendment; expenditures to a certain extent would be legally authorized under it, and must be supposed to have taken place and to continue to take place, until the law shall be altered. The conferees of the Senate were of opinion that an appropriation sufficient to cover such probable expenditure ought now to be made, without waiting for the passage of such explanatory law. They did not think such law should be made to have a retrospective operation so as to affect expenditures legally incurred before its passage; nor could they perceive how the passage of such a law could be deemed necessary to determine the propriety of making an appropriation to meet an expenditure which it could not regulate. They admitted that generally it would not be the most correct course to amend a law establishing salaries or authorizing an expenditure by a provision in a general appropriation law, though they believed there was no constitutional or legal objection to such a course; but they stated further—1st. That the Senate's amendment was not designed as an alteration of the law of 1812, but only expressing the construction of that law which appeared to the Senate the correct one, and restricting the sum appropriated to the discharge of expenditures incurred pursuant to such construction, which it is presumed may be done on the same principle that other specific appropriations are made applicable to the objects designated, and to no others. 2d. If the objection be to the words in the Senate's amendment, which restrict the application of the sum appropriated to services performed by brevet officers when acting in their brevet rank, the conferees of the Senate would agree to strike out these words and have the sum appropriated applicable to services performed by such officers generally agreeably to the terms of the estimates. Though the conferees of the Senate were willing to admit that generally, it would not be advisable to embarrass a measure embracing the mass of appropriations deemed necessary, by insisting on one of a doubtful nature, they did not consider the argument as in any degree affecting the present case, the appropriation insisted on by them not being doubtful in its nature; because, according to any fair construction that can be given the law of 1812, and adopting that preferred by the House of Representatives, some expenditure is authorized and must be presumed to take place under it, before an explanatory law can be passed; and an appropriation to meet such expenditure did not appear to them of a doubtful nature, and on such alone they insisted. It appeared also to the conferees of the Senate, that the construction given the law for several years by the government, and acquiesced in by Congress, allowing brevet officers such pay as is now asked gave those officers reasonable ground to expect a continuance thereof so long as the law continued in force, and as the expenditure now proposed to be provided for did not arise out of any new construction of the law, and had at least in part already accrued, they consi-

dered it the duty of the two Houses to provide for it in the general appropriation law, and not leave it to be provided for in an act which may or may not pass; and they could see no ground for postponing the appropriation now insisted on by them that would not equally apply to any other asked for to meet an expenditure already incurred under any law that it might be suggested required amendment.

The conferees of the Senate stated explicitly, they would not insist on making, at this time, any appropriation, with a view of covering an expenditure which should accrue subsequent to the period at which an explanatory law relating to the matter in question could be supposed to pass, and which might, therefore, be either authorized or controlled by such law; and though the sum requisite to meet the expenditure that must accrue under the existing law, before it can be altered, could not be exactly ascertained, it might be estimated with nearly the same accuracy that sums for other objects are; and therefore its uncertainty appeared to them to form no solid objections to the measure.

For the purpose, therefore, of providing for such expenditure alone as must, in any event, take place, and leaving the two houses to act in regard to the subject in future as each should consider correct, without being considered in any manner compromised by the appropriation that might now be made; and anxious to reconcile, as far as practicable, the views entertained by both houses on this subject, by making those of the House of Representatives, as far as, in their opinion, a due regard to correct legislation, and the duty they owe the Senate, would authorize, the conferees of the Senate proposed, if the conferees of the House of Representatives would agree thereto, to modify the Senate's amendment, so as to read as follows:

For additional pay, rations, and forage, to officers having brevet commissions, when commanding separate posts, districts, or detachments, requiring them to act in their brevet rank, during the months of January, February and March, of the present year, 9,000 dollars.

The committee of the House of Representatives did not consider this modification as in any material degree lessening the objections to the Senate's amendment. They should prolong their report unreasonably, if they were to repeat the answers which were given to the arguments of the committee of the Senate. In one respect they seem to have been misunderstood. The committee of the Senate consider them as admitting, that, under a just construction of the law of 1812, some expenditure must be presumed to take place, and to require an appropriation in this year. But they have made no such admission. In the army of the United States there is notoriously a number of officers in every high grade disproportionately great, when compared with the number of men whom they command, and if brevet officers are entitled to additional pay only when they command posts requiring them to act in their brevet rank, (and such is the construction of the Senate,) it may be reasonably presumed, that, while peace continues, there will no where be found that deficiency of lineal rank, which will require brevet officers so to act.

As the conferees of the Senate thought the objection urged by those of the House of Representatives to the course pursued by the Senate, that it made the passage of the large number of appropriations, in which both houses concur, depend upon that of one, in respect to which they differ, an objection inapplicable to the subject, the committees were obliged to separate, without agreeing on the subject of the Senate's amendment. The committee of the House of Representatives regret that such has been the result, and have only to hope, that if they have mistaken or misapplied the principles which ought to regulate the conduct of the two houses, on the subject of appropriation bills, that their errors may be corrected by the wisdom of the house.

